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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/120,664 07/22/98 GAVIN

D 101792-100

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HM12/0609

EXAMINER

CELSA, B

ART UNIT:

PAPER NUMBER

1654

DATE MAILED:

06/09/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

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Office Action Summary

Application No.
09/120,664

Applicant(s)
Gavin et al.

Examiner
Bennett Celsa

Group Art Unit
1654



- ☐ Responsive to communication(s) filed on _____
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☒ Claim(s) 1-39 is/are pending in the application.
- Of the above, claim(s) 2-37 and 39 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1 and 38 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claims _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) _____.
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

- ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☒ Notice of References Cited, PTO-892
- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

Claims 1-39 are currently pending.

Claims 1 and 38 are under consideration.

Claims 2-37 and 39 are withdrawn from consideration as being directed to a nonelected invention.

Election/Restriction

Restriction (with election of species) to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-11 and 35-38, drawn to a composition (e.g. biocidal) comprising composite particles of a metal containing core and a pyrithione adduct shell, classified in class 424 , subclass 405.
- II. Claims 12-24 and 32-34, drawn to a method of making a composite particle copper pyrithione, classified in class 514 , subclass 345+.
- III. Claims 25-31, drawn to a coating composition and method of using to reduce/inhibit organisms, classified in class 156, subclass 300+.
- IV. Claim 39 , drawn to a shampoo or skin care composition comprising composite particles of a metal core and a pyrithione shell, classified in class 510, subclass 119.

1. Applicant's election with traverse of Group I (claims 1-11 and 35-38) in Paper No. 4 is acknowledged. The traversal is on the ground(s) that Groups I and II should be examined together since these two groups "are so interrelated as to require simultaneous search and

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examination.” This is not found persuasive because these groups have different classifications and require separately burdensome manual and computer searches as described in item 5 of the prior office action on page 3. In response to the election of species requirement, applicant’s elected, without traverse, zinc pyrithione which reads on claims 1 and 38, respectively. Claims 2-37 and 39 are withdrawn from consideration as being directed to a nonelected invention. The requirement is still deemed proper and is therefore made FINAL.

Drawings

2. This application has been filed with informal drawings (as indicated by applicant) which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

Claim Rejections - 35 USC § 102

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

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3. Claims 1 and 38 are rejected under 35 U.S.C. 102(b) as being anticipated by Bernstein et al., U.S. Pat. No. 2,809,971 (10/57).

Bernstein et al. disclose the formation of a biocidal composition comprising particles (e.g. precipitates) of Zn pyridinethione chelate complexes (e.g. see Examples 16, 19 and 22: col. 7 and 8) which can be added directly to the soil (e.g. sprinkled: see col. 10). The particle complex which possesses ingredients within the scope of the presently claimed would inherently possess the same physical parameters e.g. core and shell.

4. Claims 1 and 38 are rejected under 35 U.S.C. 102(e) as being anticipated by Oppong et al., U.S. Pat. No. 5,776,960 (7/98: filed 10/96) and Bernstein et al. U.S. Pat. 2,809,971 which is incorporated by reference by the '960 patent (see '960 patent at col. 2, lines 6-15).

Oppong et al disclose synergistic biocidal compositions which comprise dry or tablet formulation (e.g. particles) of an ionene polymer and a metal salt, such as Zn pyridinethione chelate complexes as described in Bernstein et al. (See Examples 16, 19 and 22). The particle complex which possesses ingredients within the scope of the presently claimed would inherently possess the same physical parameters e.g. core and shell.

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5. Claims 1 and 38 are rejected under 35 U.S.C. 102(e) as being anticipated by Roenigk, U.S. Pat. No. 5,821,271 (10/98: filed 12/92)..

Roenigk disclose a biocidal dispersible (e.g. powder) composition (e.g. see col. 2, lines 40-46) comprising a chitosan zinc pyrithione complex (e.g. see col. 7, lines 6-32 and Table IV). The particle complex which possesses ingredients within the scope of the presently claimed would inherently possess the same physical parameters e.g. core and shell.

6. Claims 1 and 38 are rejected under 35 U.S.C. 102(b) as being anticipated by the Abstract to Nagata et al. JP 04-311206 (10/92).

Nagata et al. disclose a filter medium containing biocidal composition of particles comprising a zinc oxide core and shell of zinc pyrithion (and/or zinc undecylecin acid). The disclosed particulate biocidal composition clearly anticipates the presently claimed composite particles.

7. Claims 1 and 38 are rejected under 35 U.S.C. 102(b) as being anticipated by the Abstract to Fujita et al., JP 05-297198 (10/93).

Fujita et al. disclose a powder biocidal composition comprising a zinc pyridithione salt derivative (e.g. zinc 2-pyridine-thiol 1-oxide salt) alone or combined with zinc oxide. The particle complex which possesses ingredients within the scope of the presently claimed would inherently possess the same physical parameters e.g. core and shell.

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General information regarding further correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Celsa whose telephone number is (703) 305-7556.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cecilia Tsang, can be reached at (703)308-0254.

Any inquiry of a general nature, or relating to the status of this application, should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Bennett Celsa

Bennett Celsa

June 7, 1999

